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TAGS: [PGOV](#) [PREL](#) [KDEM](#) [PHUM](#) [PINR](#) [ENVR](#) [ASEC](#) [BL](#)
SUBJECT: SUPREME COURT HALTED, JUDICIARY DISMANTLED

REF: A. LA PAZ 469
[1](#)B. 08 LA PAZ 2464

Classified By: A/EcoPol Chief Joe Relk for reasons
1.4 (b, d)

[1](#)1. (C) Summary: The Bolivian Congress' lower house narrowly voted on May 14 to impeach Supreme Court President Eddy Fernandez, and the opposition-controlled Senate will begin a "trial of responsibilities" within two weeks. The ruling Movement Toward Socialism (MAS) party's main charge against Fernandez is "retardation of justice" (delay) in the case against former President Gonzalo "Goni" Sanchez de Lozada. Ironically, the impeachment process requires Fernandez' immediate suspension, which will prevent the Supreme Court from reaching a quorum and further delay the Goni case. Supreme Court Alternate Justice Bernardo Wayar said this was not a serendipitous result, suggesting ex-Goni ministers paid MAS leadership to push for Fernandez's suspension, as the case is now nearing its three-year "termination" date. Under such an arrangement, the MAS would do away with judicial oversight of MAS actions while bolstering their campaign war chests for upcoming December elections, and Fernandez would be the scapegoat. With Fernandez's suspension, the Supreme Court, the Constitutional Tribunal, and the Judicial Council are now all essentially defunct. Even if the Senate rejects Fernandez's impeachment, the MAS will label the Supreme Court as "corrupt" and campaign against it in the elections. And as they did with the Constitutional Tribunal, the MAS is likely to keep up the pressure -- there are government-sponsored cases pending against six of the eight court justices. End Summary.

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Behind the Fernandez Attack
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[1](#)2. (U) Continuing its months-long campaign to impeach Supreme Court President Eddy Fernandez (Reftel A), the ruling Movement Toward Socialism (MAS) party-controlled lower house of Congress voted May 14 to open impeachment proceedings against him in the opposition-controlled Senate. Proceedings are to begin within ten days. With Fernandez's automatic suspension, the twelve-member Supreme Court is reduced to seven members, one fewer than needed for a quorum.

¶3. (C) According to Supreme Court Alternate Justice Bernardo Wayar, the reasoning behind the MAS prosecution of Fernandez does not start and end with his supposed impeding of justice.

In a conversation with Poloff, Wayar said if the goal is to speed justice, then MAS efforts to unseat Fernandez do not make sense. One of the main charges against Fernandez is that he tried to recuse himself from the Goni case in an attempt to slow it down to the point where the case would reach a three-year termination point. (Note: According to Bolivian law, trials may not last longer than three years without a sentence, and cannot be re-tried. End note.) However, as Wayar notes, the impeachment proceedings have resulted in Fernandez's immediate suspension and potential resignation, which would only slow the case more. Further, with charges against six of the eight justices, Fernandez is not the only MAS target. Instead, this is part of a broader MAS attack on the entire judiciary.

¶4. (C) Regarding case specifics, Wayar went on to explain (and news media have also reported) that Fernandez did try to recuse himself from the case because his sister was part of the defense team for one of Goni's ex-ministers, and he felt his participation could raise charges of nepotism. In response, according to leading local daily La Razon, Defense Minister Walker San Miguel said that Fernandez planted his sister on the defense team as an excuse to get out of the case and slow it down. Wayar labeled this charge "ridiculous."

¶5. (C) According to Wayar, the goal of the MAS is not to "get Goni," but rather to dismantle all pieces of past regimes as part of the "revolutionary change process." He also postulated a potential connection between the ex-ministers who are currently being tried and current high-level MAS members, specifically citing Presidency Minister Juan Ramon Quintana, Government Minister Alfredo Rada, and San Miguel. Noting the need for MAS campaign funds for the upcoming December 6 elections, Wayar said he would not be surprised if the ex-ministers paid handsomely to have the MAS prosecute Fernandez. Under such a scenario, Fernandez's resignation would lead to a paralyzed Supreme Court and give the MAS free rein to operate without any judicial check on their decisions, while the ex-ministers would escape prosecution, with Fernandez the convenient scapegoat.

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Next Steps: Senate Trial
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¶6. (C) In another sign of the political nature of the prosecution, the MAS-controlled lower house of Congress took eleven hours to assemble a majority quorum of 66 members (out of 130 total). In the end, all 62 votes for Fernandez's impeachment were cast by MAS party members. The MAS persuaded four opposition members to be present for the quorum roll call, even though these members surely knew their presence guaranteed Fernandez's selection for impeachment.

¶7. (C) The Senate will now hold a "trial of responsibilities" within two weeks. Although the Senate is opposition-controlled, a decision against impeachment cannot be considered a foregone conclusion, as the MAS will try to recruit or pressure outlying opposition members to their side (as they have done successfully in past key votes).

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Three Courts Now Defunct
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¶8. (C) President Morales and members of the MAS party have attacked the judiciary consistently since taking office. In March 2006 Morales and Vice President Alvaro Garcia Linera claimed the Supreme Court ruled in favor of Lloyd Airlines after receiving bribes. In April 2006, Morales argued that "certain sacred cows of judiciary" do not wish to "go along with the government's policies of change." At opening of the 2007 judicial year, Morales denounced the entire system as

corrupt and "smelling of dollars", then called all supreme court justices that he did not appoint "relics of past governments."

¶9. (C) Two other parts of the judicial branch, the Constitutional Tribunal and the Judicial Council, are already essentially defunct. The MAS used a campaign of intimidation, salary cuts, and similar impeachment proceedings to reduce the Constitutional Tribunal from ten members to only one, where it has remained since the end of 2007 (Reftel B). The Constitutional Tribunal now has a backlog of more than 4,000 cases. The Judicial Council is in a similar situation, with only one out of five members (and three needed for a quorum), a backlog of over 100 disciplinary cases, and a case pending against the sole remaining member initiated by the MAS-controlled lower house of Congress. Finally, the Attorney General-equivalent, Mario Uribe, also has a case pending in the lower house. MAS Senator Ricardo Diaz has said that according to the new constitution, no new justices can be appointed to either court until the new Plurinational Assembly is seated and passes a law regarding judicial appointments, which will not occur until sometime in 2010.

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Comment
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¶10. (C) Although post finds Wayar's supposition of payoffs between past and current administration members potentially far-fetched, his overall point that the MAS is trying to eliminate the judiciary as a check on their power is supported by three years of government-supported intimidation tactics aimed at the Constitutional Tribunal and Judicial Council. With Goni now residing in the U.S., his trial may be more useful for creating a scapegoat (Fernandez) or another government foil generally (the Supreme Court), even as the MAS dismantles the last functioning part of the judicial branch. End comment.
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